

**A RHB Bank Bhd, Sime Bank Bhd (formerly known as
United Malayan Banking Corp Bhd) v Treasure Island
Resorts Sdn Bhd & Ors**

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-46 OF
1997

B GOPAL SRI RAM, ABDUL KADIR SULAIMAN AND ALAUDDIN JJCA
8 NOVEMBER 2002

Civil Procedure — Appeal — Facts, finding of — Concurrent findings of fact — Inquiry as to damages by registrar — Oral evidence led at inquiry — Findings of registrar affirmed by High Court judge — Whether open to Court of Appeal to interfere with such concurrent findings of fact

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Civil Procedure — Injunction — Damages — Inquiry as to damages — Nature of proceedings

D An injunction against the appellant was dissolved and an order made on the assessment of damages for any loss occasioned by the injunction. Pursuant to that order, an inquiry as to damages was conducted by the registrar. Oral evidence was adduced in that deponents of affidavits were cross-examined. The registrar concluded that no injury had been caused to the appellant and declined to award any damages. The appellants appealed to the judge who agreed with the registrar's findings, affirmed her decision and dismissed the appeal. The appellant thus appealed to the Court of Appeal.

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Held, dismissing the appeal with costs:

F This was in essence an appeal against concurrent findings of fact and in such appeals the Court of Appeal would not interfere with concurrent findings of fact save in exceptional cases. In the instant case the registrar had the benefit of seeing and hearing the witnesses and once the judge reviewing her decision affirmed her findings, it was not open for the Court of Appeal to reopen those findings. Further, the proceedings before the registrar were in the nature of a trial in which viva voce evidence was led. This was not a case where the judge was merely rehearing a summons by the registrar and fell outside those cases tried on a summons for judgment under O 14 of the RHC (see p 17E-G).

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H [Bahasa Malaysia summary]

Satu injunksi terhadap perayu telah dibubarkan dan perintah penilaian ganti rugi dibuat bagi sebarang kerugian yang ditanggung disebabkan oleh injunksi tersebut. Berikutan perintah tersebut, satu penyiasatan ganti rugi telah dilakukan oleh pendaftar. Keterangan lisan telah diberikan di mana pembuat-pembuat affidavit telah diperiksa balas. Pendaftar mendapati tiada sebarang kerugian dialami perayu dan enggan memberikan sebarang ganti rugi. Perayu telah

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merayu kepada hakim yang bersetuju dengan pendapat pendaftar, mengekalkan keputusannya serta menolak rayuan tersebut. Perayu merayu kepada Mahkamah Rayuan.

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Diputuskan, menolak rayuan dengan kos:

Pada dasarnya ini merupakan satu rayuan terhadap penemuan fakta yang serentak dan dalam rayuan seperti ini Mahkamah Rayuan tidak akan campurtangan di dalam penemuan fakta yang serentak kecuali dalam kes yang luarbiasa. Dalam kes ini pendaftar mempunyai kelebihan melihat dan mendengar saksi-saksi dan sebaik sahaja hakim menimbangkan semula keputusannya mengesahkan pendapatnya, tidaklah wajar bagi Mahkamah Rayuan untuk menyoal semula pendapat tersebut. Lagipun, prosiding di hadapan pendaftar merupakan perbicaraan di mana keterangan viva voce dikemukakan. Ini tidak merupakan satu kes di mana hakim semata-mata mendengar semula satu permohonan yang telah dihadapkan kepada pendaftar dan tidak merupakan kes-kes yang dibicarakan secara permohonan penghakiman di bawah A 14 KMT (lihat ms 17E–G).

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Notes

For cases on finding of facts, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 729–812.

For cases on injuction damages, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2492–2498.

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Cases referred to

DoCarmo v Ford Excavation (1981) 1 NSWLR 409 (refd)

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Legislation referred to

Rules of the High Court 1980 O 14, O 56 r 3A

Appeal from: Suit No D1–22–165 of 1988 (High Court, Kuala Lumpur)

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Asbir Kaur Sangha (Anit Kaur Radhwa with her) (Asbir, Hira Singh & Co) for the appellant.

Ramdas Tikamdas (Siva, Ram & Assoc) for the first respondent.

Dato' Lakhbir Singh Chahl (Lakhbir Singh Chahl & Co) for the second, third and fourth respondents.

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Gopal Sri Ram J (delivering judgment of the court): On 16 August 1988, the first, second, third and fourth respondents to this appeal obtained an injunction from the High Court against the appellant as well as the receivers and managers of a company known as Cocoa Processors Sdn Bhd restraining them from selling or dealing with or parting with any or all of the assets of Cocoa Processors Sdn Bhd until the final determination of the principal suit.

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A There was a further injunction which restrained the defendants in the action from issuing any prospectus or releasing any information pertaining to the trade and production methods relating to Cocoa Processors Sdn Bhd or allowing any such inspection of its assets to any party or person without express order of the court.

B On 23 February 1989, that injunction was dissolved. An order was also made on the assessment of damages for any loss that might have been occasioned in consequence of the injunction. Pursuant to that order, an inquiry as to damages was conducted by the registrar. Oral evidence was heard in the sense that the deponents of the affidavits were cross-examined. C After a long hearing, the registrar came to the conclusion that no injury had been occasioned to the appellant and declined to award any damages. In particular, the registrar expressed her dissatisfaction as to the quality of evidence led by the appellant. She found some of the evidence proffered by the appellant to be suspect.

D The appellant being dissatisfied, appealed to the judge who, at the conclusion of the arguments, affirmed the registrar's decision and dismissed the appeal before him. In his written judgment, he expressed agreement with the registrar and affirmed her findings. The appellant now appeals to us.

E In the circumstances adumbrated, the appellant begins in this court with a serious disadvantage. This is, in essence, an appeal against what are concurrent findings of fact. We have on previous occasions made the position of this court amply clear in respect of an appeal such as this save in exceptional cases, this court will not interfere with concurrent findings of fact. The registrar had the benefit of seeing and hearing the witnesses and once the judge reviewing her decision affirmed her findings, it is not open F for this court to reopen those findings.

We may add that this is not a case where the judge was merely rehearing a summons by the registrar. In the present case, the proceedings before the registrar were in the nature of a trial in which viva voce evidence was led. G The present case therefore falls outside cases such as those tried on a summons for judgment under O 14 of the Rules of the High Court 1980. That is the result of O 56 r 3A of the Rules of the High Court 1980 (see also *DoCarmo v Ford Excavation* (1981) 1 NSWLR 409).

H For these reasons the appeal is without merit. It is dismissed. The orders of the registrar and judge are affirmed. The first, second, third and fourth respondents will have their costs on separate bills with separate items of getting up, profit costs and out of pockets.

Appeal dismissed with costs.